

Hearing Date: June 28, 2017 at 9:30 a.m. (Prevailing Eastern Time)

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

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In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

PROMESA  
Title III

as representative of

No. 17 BK 03283-LTS

THE COMMONWEALTH OF PUERTO RICO, *et al.* (Jointly Administered)

Debtors.<sup>1</sup>

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**RESPONSE AND RESERVATION OF RIGHTS OF INTERNATIONAL UNION,  
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW), SERVICE EMPLOYEES INTERNATIONAL  
UNION, AND AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL  
EMPLOYEES TO DEBTORS' MOTION FOR AN ORDER APPROVING PROCEDURE  
TO RESOLVE COMMONWEALTH-COFINA DISPUTE [DOCKET ENTRY NO. 303]**

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) ("UAW"), Service Employees International Union ("SEIU"), and American Federation of State, County & Municipal Employees ("AFSCME") (together, "the Unions") submit this Response and Reservation of Rights in response to the June 10, 2017 motion ("Motion") [Docket Entry No. 301] of the Debtors *For Order Approving Procedure to Resolve Commonwealth-COFINA Dispute*.

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); and (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284) (Last Four Digits of Federal Tax ID: 8474).

### **RESERVATION OF RIGHTS**

1. The Unions do not object to the Motion's request for a procedure through which an appointed Commonwealth Agent and COFINA Agent cooperate to commence litigation to resolve the Commonwealth-COFINA Dispute.<sup>2</sup> See Motion ¶38. But the Unions reserve their right to intervene and participate in any litigation or alternative dispute resolution proceeding initiated either by the Debtors or the Commonwealth and COFINA Agents as their representatives. Or should this Court determine that one of the alternative mechanisms for resolving this "gating" issue is appropriate -- such as the interpleader complaint filed by the Bank of New York Mellon (Adv. Proc. No. 17-133-LTS), or the request by certain COFINA bondholders for resolution of the issue by the Puerto Rico Supreme Court (Docket Entry No. 270) -- the Unions likewise reserve these same rights with respect to any other mechanisms.

2. Specifically, the Unions' reservation of right includes (but is not limited to) the right to advance the position that the COFINA debt was issued in violation of the Puerto Rico Constitution, that sales tax revenues were improperly transferred to COFINA and pledged to the COFINA bondholders, and that any liens allegedly created by the COFINA structure were not special revenue bonds, were extinguished by the filing of the petitions in these Title III cases, or are otherwise, at best, unsecured. While some of these arguments have been pressed by certain general obligation (GO) bondholders of the Commonwealth, not all have, and it bears mention that the Unions and their members hold, like the GO bondholders, significant claims whose treatment in these cases will be directly affected by resolution of the COFINA issue and whose priority under federal bankruptcy law is at least on par with the GO bondholders.

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<sup>2</sup> For purposes of this Response and Reservation of Rights only, the Unions adopt the definitions of "Commonwealth Agent," "COFINA Agent," and "Commonwealth-COFINA Dispute" as defined in the Motion. See Motion ¶¶17, 38(a)-(d).

3. Furthermore, while the Unions do not object to the procedure proposed in the Motion, the Unions ask that the Court await the input of the Official Committee of Unsecured Creditors and the Official Committee of Retirees (together, “Committees”) before ruling on the Motion because the resolution of the Commonwealth-COFINA Dispute will have a significant impact on the Debtors’ plan of adjustment. The Unions note in this regard that the Official Committee of Unsecured Creditors may serve as Agent of the Commonwealth under the proposed process. On June 15, 2017, the United States Trustee for Region 21 formally appointed the Committees. SEIU is a member of the Official Committee of Unsecured Creditors, and the President of AFSCME’s Retiree Chapter, Blanca Paniagua, is a member of the Official Committee of Retirees. Accordingly, in light of the significance of the issue presented and its impact on all creditors of the Commonwealth, the motion should not be decided until the Committees have convened, selected counsel, and been provided an opportunity to respond.

### **CONCLUSION**

The Court should permit the Committees to be heard before ruling on the Motion.

The Unions reserve their rights as stated herein.

Dated: June 16, 2017

Respectfully submitted,

/s/ *Peter D. DeChiara*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16<sup>th</sup> day of June, 2017, I have filed a true and exact copy of the foregoing with the Clerk of the Court using the CM/ECF System which will notify all counsel of record and caused to be mailed or emailed a copy, as provided in the Court-approved Case Management Procedures in this case.

Dated: June 16, 2017

/s Hiram M. Arnaud  
HIRAM M. ARNAUD